

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES MADISON PROJECT
1250 Connecticut Avenue, NW
Suite 200
Washington, D.C. 20036

Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY
Washington, D.C. 20505,

and

DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, D.C. 20530,

and

FEDERAL BUREAU OF
INVESTIGATION
935 Pennsylvania Avenue, NW
Washington, D.C. 20535

Defendants.

Civil Action No. 08-0708 (JR)

APPROVED FOR RELEASE ☐
DATE: 18-Aug-2010

* * * * *

FIRST AMENDED COMPLAINT

This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et seq., as amended, for the disclosure of agency records improperly withheld from plaintiff James Madison Project by defendants Central Intelligence Agency, Department of Justice, and Federal Bureau of Investigation.

JURISDICTION

1. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendants pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

VENUE

2. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff James Madison Project ("JMP") is a non-profit organization under the laws of the District of Columbia and has the ability to disseminate information on a wide scale. Stories concerning our activities have received prominent mention in many publications including, but not limited to, the *Washington Post*, *Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones* and *Salon Magazine*.

4. Defendants Central Intelligence Agency ("CIA"), Department of Justice ("DOJ"), and Federal Bureau of Investigation ("FBI") are agencies within the meaning of 5 U.S.C. § 552 (e), and are in possession and/or control of the records requested by JMP which are the subject of this action.

BACKGROUND

5. John L. Helgerson ("Mr. Helgerson") has served as the Inspector General of the CIA since April 26, 2002. Since his appointment, Mr. Helgerson has led numerous internal investigations into controversial programs that began in the aftermath and as a result of the September 11, 2001, terrorist attacks, including such high-profile programs as the CIA's detention and interrogation of terrorist suspects. Mr. Helgerson also conducted an investigation into the CIA's actions prior to the September 11, 2001, terrorist attacks, resulting in a report which recommended "accountability boards" to consider disciplinary action against a handful of senior officials.

6. Upon information and belief, the prolonged and aggressive nature of these investigations has caused bitter resentment on the part of certain CIA operatives and officials towards the Office of the Inspector General ("OIG") in general and Mr. Helgerson in particular.

7. On October 12, 2007, the CIA confirmed that Director General Michael V. Hayden ("Director Hayden") had authorized an internal investigation into the operations of the CIA's OIG, specifically focusing on the conduct of Mr. Helgeson, which began in April 2007. The basis of the review was to address complaints that the OIG's investigations have not consisted of a fair and impartial review but rather as a "crusade" against CIA officials involved in controversial programs. CIA spokesman Paul Gimigliano refused to characterize the internal review—which was overseen by Robert L. Deitz, Senior Counselor to Director Hayden, and Michael J. Morell, Associate Deputy Director—as an "investigation" and insisted that Director Hayden's only objective was to assist the OIG in doing "its vital work even better."

8. On January 31, 2008, Director Hayden announced the completion of the investigation, including details of changes that would be made to the OIG as a result of the investigation, including measures requiring the IG to: a) keep CIA employees and managers informed about both the process and results of investigations; b) appoint an ombudsman; and c) appoint a "quality control officer" who would make sure OIG reports "include all exculpatory and relevant mitigating information."

9. Upon information and belief, the CIA's stated basis for and characterization of the internal investigation is both misleading and inaccurate. Upon further information and belief, the commencement of such an investigation posed a conflict of interest and threatens to undermine the independence of the OIG.

10. Frederick P. Hitz, who served as the CIA's Inspector General from 1990 to 1998 and currently teaches at the University of Virginia, stated on October 12, 2007, that any investigation by Director Hayden into the OIG's work would "not be proper."

11. Pursuant to the Inspector General Act of 1978, only the President of the United States may remove the Inspector General of a Cabinet-level or major agency. In the event of such action, both houses of Congress must be notified of the rationale justifying the removal.

12. Upon information and belief, Director Hayden lacks the authority to initiate an internal investigation designed to address complaint(s) against both the OIG as a whole and Mr. Helgerson in particular.

13. Pursuant to Executive Order 12993, allegations of misconduct by an Inspector General and/or senior staff members of most federal agencies' OIGs are referred to the Integrity Committee of the President's Council on Integrity and Efficiency ("PCIE"). Pursuant to Section 2(c) of Executive Order 12993, the Integrity Committee shall determine if there is a substantial likelihood that the allegation "discloses a violation of any law, rule or regulation, or gross mismanagement, gross waste of funds or abuse of authority." To the extent that an investigation is necessary, the Public Integrity Section of the Department of Justice or the Federal Bureau of Investigation will conduct the investigation on behalf of the Integrity Committee.

14. Pursuant to Executive Order 12993, records of the Integrity Committee of the PCIE are maintained by the FBI.

15. Upon information and belief, to date, Director Hayden has not referred any complaint(s) against Mr. Helgerson and/or his staff to the Integrity Committee of the PCIE.

COUNT ONE

16. JMP repeats and realleges the allegations contained in paragraphs 5 through 15 above, inclusive.

17. By letter dated October 18, 2007, JMP submitted to the CIA a FOIA request which sought copies of all internal CIA documents pertaining to discussions concerning the decision to initiate an internal review of the operations of Mr. Helgerson, and of the OIG as a whole. Copies of news articles from the *Los Angeles Times*, *New York Times*, and *USA Today* that detailed the CIA's confirmation that an internal review had been authorized were included. The request sought a waiver of all fees, noting that JMP is a non-profit organization with the ability to disseminate information on a wide scale, the

information would contribute to the public's understanding of government operations or activities and is in the public interest, and that JMP had been granted a fee waiver on all prior requests.

18. By letter dated November 5, 2007, the CIA acknowledged receipt of JMP's request and assigned it Request No. F-2008-00103. The CIA also granted JMP's request for a waiver of fees.

19. By letter dated July 11, 2008, the CIA, pursuant to judicial order, informed JMP that no records were found responsive to this request. The letter noted that, since the request is the subject of pending litigation, no administrative appeals would be permitted.

20. JMP has a legal right under the FOIA to obtain the information it seeks, and there is no legal basis for the denial by the CIA of said right.

COUNT TWO

21. JMP repeats and realleges the allegations contained in paragraphs 5 through 15 above, inclusive.

22. By letter dated August 11, 2008, JMP submitted to the CIA a FOIA request which sought copies of all internal CIA documents pertaining to: a) discussions concerning the decision to initiate an internal review of the operations of Mr. Helgeson, and of the OIG as a whole, dated after November 5, 2007; b) the activities of the internal review itself; c) proposals for and the implementation of changes in the operations and procedures of the OIG; and d) any semiannual IG reports to the Director that reference any of the above. Copies of news articles from the *New York Times* and *Washington Post* that detailed the CIA's confirmation that an internal review had been authorized were included. The request sought a waiver of all fees, noting that JMP is a non-profit organization with the ability to disseminate information on a wide scale, the information would contribute to the public's understanding of government operations or activities and is in the public interest, and that JMP had been granted a fee waiver on most prior requests.

23. By letter dated August 28, 2008, the CIA acknowledged receipt of JMP's request and assigned it Request No. F-2008-01698. The CIA also granted JMP's request for a waiver of fees.

24. By letter dated August 27, 2008, JMP amended its request to expand the time frame to include the period January 1, 2006 – November 5, 2007.

25. By letter dated September 18, 2008, the CIA acknowledged receipt of JMP's amendment and stated that its search for records will be from January 1, 2006 – August 28, 2008.

26. As twenty working days have elapsed without a substantive determination by the CIA, JMP has constructively exhausted all required administrative remedies.

27. JMP has a legal right under the FOIA to obtain the information it seeks, and there is no legal basis for the denial by the CIA of said right.

COUNT THREE

28. JMP repeats and realleges the allegations contained in paragraphs 5 through 15 above, inclusive.

29. By letter dated May 26, 2008, JMP submitted to the DOJ Criminal Division a FOIA request which sought copies of all DOJ documents pertaining to: a) investigations referred to the Criminal Division's Public Integrity Section by the Integrity Committee of the PCIE into the operations of the CIA IG, John Helgerson, and of the IG's Office as a whole; and b) discussions, records, correspondence, memoranda, or opinions of the Public Integrity Section regarding CIA Director Hayden's decision to initiate an internal investigation of the IG's Office. Copies of news articles from the *New York Times* and *Los Angeles Times* that detailed the CIA's confirmation that an internal review had been authorized were included. The request sought a waiver of all fees, noting that JMP is a non-profit organization with the ability to disseminate information on a wide scale, the information would contribute to the public's understanding of government operations or

activities and is in the public interest, and that JMP had been granted a fee waiver on most prior requests.

30. By letter dated June 5, 2008, the DOJ acknowledged receipt of JMP's request and assigned it Request No. CRM-200800363.

31. By telephone on July 21, 2008, JMP's Director of FOIA Operations, Kel McClanahan, contacted the DOJ Criminal Division's FOIA Requester Service Center for a status update on the request. The DOJ stated that the request was still being processed and indicated that it could not provide a concrete date upon which the process would be completed because no response had yet been received from the Public Integrity Section.

32. By telephone on August 13, 2008, Mr. McClanahan contacted the DOJ Criminal Division's FOIA Requester Service Center again for a status update on the request. The DOJ stated that the request was still being processed and indicated that it still could not provide a concrete date upon which the process would be completed, but that an overdue notice was being sent to the Public Integrity Section.

33. By telephone on August 20, 2008, Mr. McClanahan contacted the DOJ Criminal Division's FOIA Requester Service Center again for a status update on the request. The DOJ stated that the request was still being processed and indicated that it still could not provide a concrete date upon which the process would be completed, but that the Public Integrity Section had until September 3, 2008, to respond.

34. By telephone on August 21, 2008, a representative of the DOJ Criminal Division's FOIA Requester Service Center contacted Mr. McClanahan. The representative stated that the FOIA Requester Service Center is not required to answer questions about the status of requests, that these updates were merely a courtesy, and that the Public Integrity Section "will get to it when it gets to it."

35. As twenty working days have elapsed without a substantive determination by the DOJ, JMP has constructively exhausted all required administrative remedies.

36. JMP has a legal right under the FOIA to obtain the information it seeks, and there is no legal basis for the denial by the DOJ of said right.

COUNT FOUR

37. JMP repeats and realleges the allegations contained in paragraphs 5 through 15 above, inclusive.

38. By letter dated May 26, 2008, JMP submitted to the FBI a FOIA request which sought copies of all PCIE documents pertaining to a) investigations authorized by the Integrity Committee of the PCIE into the operations of the CIA IG, John Helgerson, and of the IG's Office as a whole; and b) discussions, records, correspondence, memoranda, or opinions of the Integrity Committee regarding CIA Director Hayden's decision to initiate an internal investigation of the IG's Office. Copies of news articles from the *New York Times* and *Los Angeles Times* that detailed the CIA's confirmation that an internal review had been authorized were included. The request sought a waiver of all fees, noting that JMP is a non-profit organization with the ability to disseminate information on a wide scale, the information would contribute to the public's understanding of government operations or activities and is in the public interest, and that JMP had been granted a fee waiver on most prior requests.

39. By letter dated July 1, 2008, the FBI acknowledged receipt of JMP's request and assigned it Request No. 1116243-000. In this letter, the FBI informed JMP that no records were found responsive to this request.

40. By letter dated September 11, 2008, JMP submitted an appeal of the FBI's determination to the DOJ Office of Information and Privacy. In this letter, JMP stipulated that there were no formal investigations launched by the PCIE Integrity Committee of Mr. Helgerson or his office and accordingly limited the scope of the appeal to the request's second line item.

41. By letter dated September 19, 2008, the DOJ acknowledged receipt of JMP's appeal and assigned it Appeal No. 08-2741.

42. As twenty working days have elapsed without a substantive determination by the DOJ Office of Information and Privacy, JMP has constructively exhausted all required administrative remedies.

43. JMP has a legal right under the FOIA to obtain the information it seeks, and there is no legal basis for the denial by the FBI of said right.

WHEREFORE, plaintiff James Madison Project prays that this Court:

- (1) Order the defendants to disclose the requested records in their entireties and make copies promptly available to it;
- (2) Award reasonable costs and attorney's fees as provided in 5 U.S.C. § 552 (a)(4)(E) and/or 28 U.S.C. § 2412 (d);
- (3) Expedite this action in every way pursuant to 28 U.S.C. § 1657 (a); and
- (4) Grant such other relief as the Court may deem just and proper.

Date: November 14, 2008

Respectfully submitted,

/s/

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